

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT C. MURPHY,
Appellant,
vs.
JILL L. MURPHY,
Respondent.

No. 48652

FILED

JUN 08 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order concerning child custody. Eighth Judicial District Court, Family Court Division, Clark County; Jennifer Elliott, Judge.

Appellant Robert Murphy and respondent Jill Murphy have two minor children from their five-year marriage. Under the post-decree child custody order, the district court awarded appellant primary physical custody of the children and devised a four-tier visitation schedule for respondent.

In particular, the first tier provides for visitation every other weekend from 9:00 a.m. to 6:00 p.m. on Saturday and Sunday, in addition to Wednesday from 5:00 p.m. to 7:00 p.m., for ten consecutive weeks. After the first tier concludes, the second tier provides for visitation every other Saturday from 9:00 a.m. until Sunday at 6:00 p.m., along with Wednesday from 5:00 p.m. to 7:00 p.m., for five consecutive weeks. Following the second tier, the third tier provides for visitation every other Friday from after school until Sunday at 6:00 p.m., while still including Wednesday from 5:00 p.m. to 7:00 p.m., for five consecutive weeks. Finally, under the fourth tier, which follows the third tier's conclusion,

respondent is to have three days' visitation following appellant's four-day custody period.

The fourth tier arrangement is contingent upon respondent's successful completion of the first three tiers, respondent moving to Green Valley, and respondent complying with the no contact order between the children and respondent's new husband.¹ The custody order further provides that if the children have any contact with the husband, the visitation arrangement will revert to the first tier, but with supervised visitation.

On appeal, appellant contends that the district court erred by not immediately revoking respondent's visitation with the children due to her relationship with a convicted child abuser. Appellant asked that he be awarded temporary sole legal and physical custody of the children, with respondent having only supervised visitation, pending a rehearing of the custody issue before a different district court judge. Appellant insists that the district judge, Judge Elliott, should have recused herself due to alleged improprieties and bias.

With regard to the visitation arrangement, matters of custody, including visitation, rest in the district court's sound discretion.² This

¹During the divorce proceedings, evidence was presented to the district court that respondent's boyfriend, now respondent's husband, was charged with sexual assault with a minor under sixteen years of age, a two-year-old girl. The record shows that the husband pleaded guilty to a lesser crime, was sentenced to serve time, and was assessed a fine. Accordingly, the district court ordered that the husband is not permitted any contact with the children.

²Wallace v. Wallace, 112 Nev. 1015, 922 P.2d 541 (1996).

court will not disturb the district court's custody decision absent a clear abuse of discretion.³ In determining child custody, the court's sole consideration is the child's best interest.⁴

Here, the district court concluded that it is in the children's best interest to have visitation with their mother, and more importantly, visitation with their two half-siblings. The district court crafted an order to ensure the children's safety. If respondent does not comply with the provisions of the visitation order, appellant may move the district court to enforce that order. Thus, we conclude that the district court did not abuse its discretion when it awarded respondent visitation with the children.

As for appellant's request that this case be assigned to a different district court judge, a party seeking to disqualify a judge for bias or prejudice must file an affidavit specifying the basis for disqualification not less than twenty days before the date set for trial or hearing of the case, or not less than three days before the date set for a pretrial hearing.⁵ Here, the record does not indicate that appellant ever sought Judge Elliott's disqualification. Judge Elliott has presided over the proceedings for approximately two and one half years, and we deny appellant's

³Sims v. Sims, 109 Nev. 1146, 865 P.2d 328 (1993).

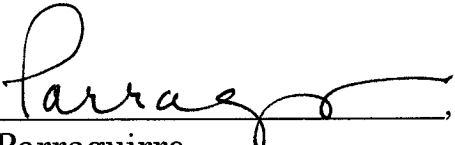
⁴NRS 125.480(1).

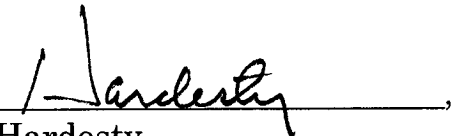
⁵See NRS 1.235(1); see also Towbin Dodge, LLC v. Dist. Ct., 121 Nev. 251, 112 P.3d 1063 (2005) (recognizing that if new grounds for a judge's disqualification are discovered after the time limits have run under NRS 1.235(1), a party may file a motion to disqualify a judge under the Nevada Code of Judicial Conduct).

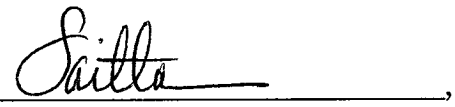
disqualification request, which is improperly made in the context of an appeal from a custody order.

For the foregoing reasons, we affirm the district court's order.

It is so ORDERED.⁶

 J.
Parraguirre

 J.
Hardesty

 J.
Saitta

cc: Hon. Jennifer Elliott, District Judge, Family Court Division
Robert C. Murphy
Amesbury & Schutt
Eighth District Court Clerk

⁶In light of this order, we deny as moot appellant April 3, 2007, emergency motion for temporary sole legal and physical custody. Also, we note that this court cannot consider on appeal matters not properly appearing in the district court record. See Carson Ready Mix v. First Nat'l Bk., 97 Nev. 474, 635 P.2d 276 (1981).